vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3775 OF 2003
IN
SUIT NO.3802 OF 1998

Laxmi G. Raheja ... Plaintiff

V/s.

Roopchand J. Rathod ... Defendant

Mr.H.S.S. Murthy for Plaintiff
Mr.M.B. Jadhav for Defendant

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 18, 2006**

P.C.:

. The Plaintiff has filed the suit for a declaration that the documents at Exhibits E, F, G, H and I are null and void. Certain other reliefs have also been sought in the plaint including that the defendants be directed to hand over vacant and peaceful possession of the suit property.

2. By this Motion, the Defendant has sought relief under Order 7 Rule 11 of the Code of Civil Procedure. In the alternative, the Defendant has sought to stay the present suit. According to the Defendant, he has filed Suit No.1864 of 1998. This suit has been filed for a declaration that the same documents which are the subject matter of the present suit are valid and binding on the plaintiff. An earlier Motion being Notice of Motion No.2311 of 2001 was taken out by the Defendant

for return of the plaint and for submitting it to the appropriate Court. This Court has directed that since the issue of jurisdiction is a mixed question of law and fact, evidence would have to be recorded on that issue. The Notice of Motion was dismissed.

3. Reliance is placed by the learned Counsel for the Defendant on the judgment in the case of *Manohar Lal V/s. Seth Hiralal*, **AIR 1962 SC 527** in support of his submissions.

4. As the earlier Motion seeking the same reliefs has been dismissed the present Motion must be dismissed. In my view, since the subject matter of both the suits is the validity of the documents at Exhibits E, F, G, H and I, it would be appropriate to direct that both the Suits should be heard together.

5. Suit No.1864 of 1998 to be heard alongwith the present suit.

6. Motion is dismissed.